

<b>COMPLIANCE BOARD OPINION NO. 03-11</b>
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July 18, 2003

*Mr. George F. Wiggers*  
*Editor, Forest Heights News Report*

The Open Meetings Compliance Board has considered your complaint that the Mayor and Town Council of Forest Heights violated the Open Meetings Act in connection with a closed meeting on June 2, 2003. For the reasons stated below, the Compliance Board finds that if the discussion at the closed session involved the qualifications of an individual for the position of treasurer, the Town Council had a basis under the Open Meetings Act to close the session. The Compliance Board further finds, however, that the Council violated the Act by failing to follow the Act's procedures for closing a session.

**I**

**Complaint and Response**

On June 2, 2003, the Mayor and Town Council met in an open session. The complaint noted that this meeting was "consistent with the Open Meetings Act."<sup>1</sup> At the conclusion of the open session, according to the complaint, the Mayor "announced that the council members had some closed door business. There was no written statement as to the reason for closing the meeting and there was no vote taken to begin a closed session of the Town Council. All persons, including the Town Clerk, were then asked to leave the room." Based on information from a council member, the complaint indicated that, during the closed session, the Mayor requested approval of Ms. White for the position of Treasurer, and the Council concurred. During the open session, the Mayor had introduced Eureka White and indicated that Ms. White would be proposed as the Town Treasurer. "The council members proceeded then to interview Ms. White as to her qualifications for the

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<sup>1</sup> The complaint pointed out that, "because citizens are generally not recognized to speak at this meeting, the workshop meeting does violate the Town Charter's Section 33-6 provision ... that citizens shall have a reasonable opportunity to be heard at any meeting." The Compliance Board lacks jurisdiction to interpret or apply the provisions of a municipal charter. Consequently, this aspect of the complaint is not considered. The Compliance Board notes, however, that the Town's response indicated that, "after reviewing the Charter, the Mayor has decided to schedule a period at the end of workshop meetings for public comment."

position. During the questioning period, the Mayor also indicated that the Council would have the opportunity to vote on Ms. White after the meeting.”

The complaint identified four alleged violations of the Open Meetings Act in connection with this closed session: no written statement justifying the closed session, no recorded vote by the Council to close the session, improper discussion of the appointment of Ms. White in a closed session, and agreement to the appointment in a closed session.

In a timely response on behalf of Forest Heights, Wilmer R. Ticer, Esquire, acknowledged that the meeting was closed without preparation of a written statement or a recorded vote prior to the closing. In addition, Mr. Ticer agreed “that the actual vote to appoint a public [official] should not be held in closed session.” His response contended, however, that “a discussion of the qualifications for appointment as a public official of any individual falls within the ambit of [a personnel matter] and closing of the session is appropriate.”

## **II**

### **Analysis**

When the Town Council considered Ms. White’s appointment to be Treasurer, it was exercising a legislative function subject to the Open Meetings Act. The term “legislative function” includes “approving or disapproving an appointment.” §10-502(f)(2) of the Act.<sup>2</sup> Therefore, the meeting had to be open to public observation unless one or more of the exceptions in §10-508(a) would justify a closed session and only if the proper procedures were followed.

One permissible basis for closing a meeting is the exception related to specific personnel matters, §10-508(a)(1). Under this provision, a public body may meet in closed session or adjourn in open session to a closed session to discuss “the appointment...of appointees, employees, or officials over whom it has jurisdiction.” In this situation, even though council members asked questions of Ms. White during the open session, it would be reasonable to expect them to further discuss the appointment in a candid way during the closed session. Thus, the invocation of the specific personnel exception would have been justified.

As the complaint pointed out, however, the meeting could lawfully be closed only if the Council held a public vote to do so and if the presiding officer prepared an appropriate written statement of the reason for closing the meeting, the legal authority to do so, and a listing of the topics to be discussed. §10-508(d). As Mr.

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<sup>2</sup> All statutory references in this opinion are to the State Government Article, Maryland Code.

Ticer acknowledged, these procedural steps were not taken. Consequently, the Act was violated.<sup>3</sup>

### **III**

#### **Conclusion**

The Open Meetings Compliance Board finds that the Town Council of Forest Heights violated the Open Meetings Act by closing a meeting on June 2, 2003, without complying with the requirements of the Act.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
*Tyler G. Webb*

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<sup>3</sup> Mr. Ticer's response also suggested that the meeting was permissibly closed under §10-508(a)(2), which allows a closed session to "protect the privacy or reputation of individuals with respect to a matter that is not related to public business." Because the appointment of a Treasurer is unquestionably a matter that *is* related to public business, it is difficult to see how this exception might have applied.